

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1020
Committee Substitute Favorable 4/28/89

Short Title: Beer Franchise Law.

(Public)

Sponsors:

Referred to:

April 5, 1989

1 A BILL TO BE ENTITLED
2 AN ACT REVISING THE BEER FRANCHISE LAW.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 18B of the General Statutes is amended by adding the
5 following new Article 13:

6 **“ARTICLE 13.**
7 **“BEER FRANCHISE LAW.**

8 **“§ 18B-1300. Purpose.**

9 Pursuant to the authority of the State under the Twenty-First Amendment to the
10 United States Constitution, the General Assembly finds that regulation of the business
11 relations between malt beverage manufacturers and importers and the wholesalers of
12 such products is necessary to:

- 13 (1) Maintain stability and healthy competition in the malt beverage
14 industry in this State.
15 (2) Promote and maintain a sound, stable and viable three-tier system of
16 distribution of malt beverages to the public.
17 (3) Promote the compelling interest of the public in fair business relations
18 between malt beverage suppliers and wholesalers, and in the
19 continuation of beer franchise agreements on a fair basis.
20 (4) Maintain a uniform system of control over the sale, purchase and
21 distribution of malt beverages in the State.

22 **“§ 18B-1301. Definitions.**

1 (1) 'Supplier' means a brewer, fermenter, processor, bottler, packager or
2 importer of malt beverages, including anyone who holds a brewery,
3 malt beverages importer or nonresident malt beverages vendor permit.

4 (2) 'Wholesaler' means the holder of a malt beverages wholesaler permit.

5 **"§ 18B-1302. Franchise agreement.**

6 (a) Nature of Agreement. – A franchise agreement is a commercial relationship
7 between a wholesaler and supplier of a definite or indefinite duration, whether written
8 or oral, including:

9 (1) A relationship whereby a wholesaler is granted the right to offer and
10 sell the brands of malt beverages offered by the supplier; or

11 (2) An agreement whereby a supplier grants to a wholesaler a license to
12 use a trade name, trademark, service mark or related characteristic and
13 in which there is a community of interest in the marking of the
14 products of the supplier by lease or otherwise.

15 (b) Existence of Agreement. – A franchise agreement as described in subsection
16 (a) exists when:

17 (1) The supplier has shipped malt beverages to a wholesaler or accepted
18 an order for malt beverages from the wholesaler;

19 (2) A wholesaler has paid or the supplier has accepted payment for an
20 order of malt beverages intended for sale within this State;

21 (3) The supplier and wholesaler have filed with the Commission a
22 distribution agreement as required by G.S. 18B-1303; or

23 (4) A supplier purchases the right to manufacture a malt beverage product,
24 or the trade name for such product, or the right to distribute a product,
25 from another supplier with whom the wholesaler has a franchise
26 agreement.

27 **"§ 18B-1303. Filing of distribution agreement; no discrimination.**

28 (a) Filing. – It is unlawful for a supplier to provide malt beverages to a
29 wholesaler unless a distribution agreement has been filed with the Commission
30 describing the brands of the supplier which such sales may take place. If the supplier
31 sells several brands, the agreement need not apply to all brands. No supplier may
32 provide by a distribution agreement for the distribution of a brand to more than one
33 wholesaler for the same territory. A wholesaler may, however, with the approval of the
34 Commission distribute malt beverages outside his designated territory during periods of
35 temporary service interruption when requested to do so by the supplier and the
36 wholesaler whose service is interrupted.

37 (b) No Discrimination. – A wholesaler shall service all retail permit holders
38 within his designated territory without discrimination.

39 (c) No Price Maintenance. – A franchise agreement shall not, either expressly or
40 by implication or in its operation, establish or maintain the resale price of any brand of
41 malt beverages by a wholesaler.

42 **"§ 18B-1304. Prohibitions.**

43 It is unlawful for a supplier, or an officer, agent or representative of a supplier, to:

- 1 (1) Coerce or attempt to coerce or persuade a wholesaler to violate any
2 provision of the ABC laws or rules of the Department of Revenue; or
3 (2) Alter in a material way, terminate, fail to renew, or cause a wholesaler
4 to resign from, a franchise agreement with a wholesaler except for
5 good cause and with the notice required by G.S. 18B-1305.

6 **"§ 18B-1305. Cause for termination of franchise agreement.**

7 (a) Meaning of Good Cause. – Good cause for altering or terminating a franchise
8 agreement, or failing to renew or causing a wholesaler to resign from such an
9 agreement, exists when the wholesaler fails to comply with provisions of the agreement
10 which are reasonable, material, not unconscionable, and which are not discriminatory
11 when compared with the provisions imposed, by their terms or in the manner of
12 enforcement, on other similarly situated wholesaler by the supplier. In any dispute over
13 alteration, termination, failure to renew or causing a wholesaler to resign from a
14 franchise agreement, the burden is on the supplier to establish that good cause exists for
15 the action.

16 (b) Notice of Cause. – At least 90 days before altering, terminating or failing to
17 renew a franchise agreement for good cause, the supplier must give the wholesaler
18 written notice of the intended action and the specific reasons for it. If the cause for the
19 alteration, termination or failure to renew is subject to correction by the wholesaler, and
20 the wholesaler makes such correction within 45 days of receipt of the notice, the notice
21 shall be void.

22 (c) Termination for Cause without Advance Notice.–A supplier may terminate or
23 fail to renew a franchise agreement for any of the following reasons, and the termination
24 shall be complete upon receipt by the wholesaler of a written notice of the termination
25 and the reason:

- 26 (1) Insolvency of the wholesaler, the dissolution or liquidation of the
27 wholesaler, or the filing of any petition by or against the wholesaler
28 under any bankruptcy or receivership law which materially affects the
29 wholesaler's ability to remain in business.
30 (2) Revocation of the wholesaler's State or federal permit or license for
31 more than 30 days.
32 (3) Conviction of the wholesaler, or of a partner or individual who owns
33 ten percent (10%) or more of the partnership or stock of the
34 wholesaler, of a felony which might reasonably be expected to
35 adversely affect the goodwill or interest of the wholesaler or supplier.
36 The provisions of this subdivision shall not apply, however, if the
37 wholesaler or its existing partners or stockholders shall have the right
38 to purchase the interest of the offending partner or stockholder, and
39 such purchase is completed within 15 days of the conviction.
40 (4) Fraudulent conduct by the wholesaler in its dealings with the supplier
41 or its products.
42 (5) Failure of the wholesaler to pay for the supplier's products according
43 to the established terms of the supplier.

1 (6) Assignment, sale or transfer of the wholesaler's business or control of
2 the wholesaler without the written consent of the supplier, except as
3 provided in G.S. 18B-1307.

4 (d) Absence of Good Cause. – Good cause for alteration, termination or failure to
5 renew a franchise agreement does not include:

6 (1) The failure or refusal of the wholesaler to engage in any trade practice,
7 conduct or activity which would violate federal or State law.

8 (2) The failure or refusal of the wholesaler to take any action which
9 would be contrary to the provisions of this Article.

10 (3) A change in the ownership of the supplier or the acquisition by another
11 supplier of the brewery, brand or trade name or trademark, or
12 acquisition of the right to distribute a product, from the original
13 supplier.

14 **§ 18B-1306. Remedies for wrongful termination.**

15 (a) Injunctive Relief. – A wholesaler whose franchise agreement is altered,
16 terminated or not renewed in violation of this Article may bring an action to enjoin such
17 unlawful alteration, termination or failure to renew. The action may be brought in the
18 county in which the wholesaler has its principal place of business or in any county in
19 which the wholesaler receives or distributes the products in issue. Any injunction
20 issued pursuant to this subsection shall require the wholesaler to supply the customers in
21 its territory with their reasonable retail requirements and to otherwise serve the territory.

22 (b) Monetary Damages. – In lieu of injunctive relief, a wholesaler whose
23 franchise agreement is altered, terminated or not renewed in violation of this Article
24 shall be entitled to recover monetary damages from the supplier. The amount to which
25 the wholesaler is entitled shall be the value of the wholesaler's business distributing the
26 supplier's products, including:

27 (1) The laid-in costs to the wholesaler of the inventory of the supplier's
28 products, including any State and local taxes paid on the inventory by
29 the wholesaler, plus a reasonable charge for handling of the products
30 upon surrender of the inventory to the supplier.

31 (2) The fair market value of all assets, including ancillary businesses of
32 the wholesaler used in distributing the supplier's products. The total
33 compensation to be paid to the wholesaler shall be reduced, however,
34 by any amount received by the wholesaler from sale of assets of the
35 business used in distributing the supplier's products as well as by the
36 value such assets have to the wholesaler unrelated to the supplier's
37 products. 'Fair market value' means the highest dollar amount at
38 which a seller would be willing to sell and a buyer willing to buy at a
39 time prior to the alteration, termination or failure to renew, when each
40 possesses all information relevant to the transaction.

41 **§ 18B-1307. Transfer of wholesaler's business.**

42 (a) Right of Transfer to Designated Family Member upon Death. – Upon the
43 death of a wholesaler, that individual's interest in the wholesaler business, including the
44 rights under the franchise agreement with the supplier, may be transferred or assigned to

1 a designated family member. The transfer or assignment shall not be effective until
2 written notice is given to the supplier, but the supplier's consent is not required for the
3 transfer or assignment. 'Designated family member' means the deceased wholesaler's
4 spouse, child, grandchild, parent, brother or sister, who is entitled to inherit the deceased
5 wholesaler's ownership interest under the terms of the deceased wholesaler's will or
6 other testamentary device or under the laws of intestate succession. With respect to an
7 incapacitated individual having an ownership interest in a wholesaler, the term
8 'designated family member' also means the person appointed by the court as the
9 conservator of such individual's property. The term also includes the appointed and
10 qualified personal representative and the testamentary trustee of a deceased wholesaler.

11 (b) Approval of Certain Transfers. – Upon notice to and approval by the supplier,
12 an individual owning an interest in a wholesaler may sell, assign or transfer that interest,
13 including the wholesaler's rights under its franchise agreement with the supplier, to any
14 qualified person. Within 30 days of receipt of notice of the intended sale, assignment or
15 transfer, the supplier shall request any additional relevant, material information
16 reasonably necessary for deciding whether to approve the transaction. The supplier
17 shall have 30 days from receipt of that information to object to the sale, assignment or
18 transfer. The supplier may object only if the proposed transferee fails to meet
19 qualifications and standards that are nondiscriminatory, material, reasonable and
20 consistently applied to North Carolina wholesalers by the supplier. The burden shall be
21 upon the supplier to prove that the proposed transferee is not qualified.

22 (c) Damages. – A supplier who disapproves or prevents a proposed assignment
23 or change of ownership in violation of this section shall be liable to the wholesaler who
24 proposed to make the sale, assignment or transfer for the difference between the
25 disapproved sale price and a subsequent actual price of a sale of the same assets
26 completed within a reasonable period. If, however, the proposed transfer or sale was to
27 a business associate at a bargain price, the amount of compensation shall be at least the
28 fair market value of the interest proposed to be sold or transferred, minus the proceeds
29 of an actual sale of the interest completed within a reasonable time.

30 **"§ 18B-1308. Article part of all franchise agreements.**

31 The provisions of this Article shall be part of all franchise agreements as defined in
32 G.S. 18B-1302 and may not be altered by the parties."

33 Sec. 2. Article 11 of Chapter 18B is amended by adding the following new
34 section at the end of that Article:

35 **"§ 18B-1119. Supplier's financial interest in wholesaler.**

36 (a) A supplier or an officer, director, employee or affiliate of a supplier may
37 financially assist a proposed purchaser in acquiring ownership of a wholesaler's
38 business by participation in a limited partnership arrangement in which the supplier,
39 officer, director, employee or affiliate is a limited partner and the proposed purchaser
40 seeking to acquire ownership of the wholesaler's business is a general partner. Such
41 limited partnership arrangement may exist for no longer than eight years. If the general
42 partner defaults in the agreement with the limited partner, and the limited partner
43 acquires title to the general partner's interest, the limited partner must divest itself of the
44 general partner's interest within 180 days.

1 (b) A supplier or an officer, director, employee or affiliate of a supplier may
2 financially assist a proposed purchaser in acquiring ownership of a wholesaler's
3 business by making a business loan and taking as security the assets of the wholesaler's
4 business. The business loan may exist for no longer than eight years. If the wholesaler
5 defaults on the loan and it is necessary for the supplier to take title to the assets of the
6 business, the supplier may operate the business for a period not to exceed 180 days, by
7 which time the supplier must divest itself of the business. The supplier may make the
8 subsequent purchaser a business loan, taking as security the assets of the wholesaler's
9 business. It shall also be permissible for the wholesaler and supplier to agree on the sale
10 of the wholesaler's business to the supplier, provided that the supplier shall divest itself
11 of the wholesaler's business within 180 days.

12 (c) A supplier or an officer, director, employee or affiliate of a supplier may have
13 a security interest in the inventory or property of its wholesaler to secure payment for
14 such inventory or other loans for other purposes."

15 Sec. 3. G.S. 18B-1109(b) and G.S. 18B-1117 are repealed.

16 Sec. 4. This act is effective upon ratification and shall apply to all franchise
17 agreements in existence at that time.